

motions. Plaintiff has also attempted to serve Cisco Systems, Inc. ("Cisco") with similar subpoenae; Cisco has objected to the subpoenae on various grounds.

3. On April 6, 2004, Defendants John Chambers, Anthony Savastano, and Carl Wiese, all employees of Cisco, moved to stay discovery in the matter until defendants have had an opportunity to respond to Plaintiff's Complaint, which responses are not even due until May 17, 2004. Messrs. Chambers, Savastano and Wiese explained that they intend to file a motion to dismiss, and to allow discovery to go forward at this stage of the litigation would risk an unnecessary use of defendants' resources to defend claims that may be defective as a matter of law. The Court has not yet ruled on this motion.

4. Rule 45(c)(3)(A) provides that "the court . . . *shall* quash or modify the subpoena if it . . . fails to allow reasonable time for compliance." (emphasis added). In this regard, the subpoena at issue here is facially unreasonable and, accordingly, must be quashed. First, the above-captioned action was commenced only one and one-half months ago. The defendants' responses are not even due for several more weeks. Moreover, discovery in the matter cannot begin until an even later date and, in any event, is subject to a pending motion to stay. Lucent, a nonparty, should not be required to produce documents at this stage of the litigation, which comes well before the parties themselves are even allowed to request documents from each other.

5. In addition to being premature, Plaintiff's subpoena is also procedurally deficient. Most notably, the subpoena was issued by the *pro se* Plaintiff himself and not by a court clerk or an attorney as required by Rule 45(a)(3)(A)-(B). Thus, the subpoena is not authorized and, consequently, is invalid.²


² The subpoena also fails to indicate the court in which the matter is pending as required by Rule 45(a)(1)(B).

6. In addition to the above-referenced deficiencies, the subpoena at issue is substantively deficient in that Lucent cannot ascertain what is being sought because the requests are unintelligible. Accordingly, Lucent is unable to assess at this time whether the subpoena subjects it "to undue burden" pursuant to Rule 45(c)(3)(A)(iv).

WHEREFORE, Lucent Technologies Inc. respectfully requests that the Court quash Plaintiff's subpoena duces tecum in its entirety.

LUCENT TECHNOLOGIES INC.,

By its attorneys,



Thomas E. Shirley, Esq. (BBO# 542777)

Lisa M. Gaulin, Esq. (BBO# 654655)

CHOATE, HALL & STEWART

Exchange Place

53 State Street

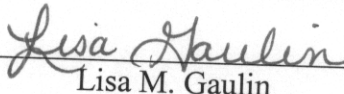
Boston, MA 02109-2891

617-248-5000

Dated: April 30, 2004

Certification of Conference

Pursuant to Local Rule 7.1(A)(2), I, Lisa M. Gaulin, hereby certify that I have made a good-faith effort to confer on this issue with the *pro se* Plaintiff prior to filing this motion by leaving voice messages with him on April 29, 2004 and April 30, 2004. As Plaintiff did not return my phone calls prior to filing this motion, we were not able to resolve the issue.


Lisa M. Gaulin

I HEREBY CERTIFY THAT A TRUE COPY OF
THE ABOVE DOCUMENT WAS SERVED
UPON THE ATTORNEY OF RECORD FOR
EACH OTHER PARTY BY MAIL/HAND ON

DATE 4-30-04 SIGNATURE 